

# Exhibit “C”

**UNITED STATE DISTRICT COURT  
DISTRICT OF NEW JERSEY**

BUDD NAHAY, ROBERT STARRETT, ALEX  
NEVELSON, ERIC TERRELL, DARLENE  
PENNOCK, FRANCESCO TRAMA and JOHN  
STEWARDS, on behalf of all themselves and all  
others similarly situated

Plaintiffs,

v.

VONAGE AMERICA, INC., VONAGE  
HOLDINGS CORP., and VONAGE  
MARKETING INC.

Defendants.

MDL 1862

Civ. A. No. 3:07-cv-03906-FLW-DEA

**AFFIDAVIT OF THE SETTLEMENT ADMINISTRATOR**

I, Jenny Penning being duly sworn, state:

1. I am a Project Manager employed by Epiq Class Action and Claims Solutions (“Epiq”), the settlement administrator for the above captioned matter (the “Litigation”). I am fully familiar with the actions taken by Epiq with respect to the settlement of the Litigation. These actions are more fully described below.

2. Epiq is a firm with more than 20 years of experience in claims processing and Settlement administration. Epiq’s class action case administration services include coordination of all notice requirements, design of direct-mail notice, establishment of fulfillment services, receipt and processing of opt-outs, coordination with the United States Postal Service, claims database management, claim adjudication, funds management, and distribution services. Epiq works with the settling parties, the Court, and the class members in a neutral facilitation role, taking the negotiated terms of a Settlement and implementing Settlement administration services.

3. I submit this affidavit to describe and provide proof, consistent with the terms of the Stipulation and Settlement Agreement (“Settlement Agreement”) dated December 23, 2010, of Epiq’s settlement administration responsibilities.

#### **OVERVIEW OF EPIQ’S RESPONSIBILITIES**

4. In administering the Settlement terms reached in the above-captioned action, Epiq’s responsibilities included:

- (a) renting a Post Office Box to receive Requests for Exclusion, Claim Forms and other communications from potential Class Members;
- (b) receiving, logging, and processing Requests for Exclusion, Web Claims, Claim Forms, Objections and other communications from potential Class Members;
- (c) creating a website which included settlement information and an online Web Claim submission;
- (d) setting up an email address for class members to email questions;
- (e) providing a toll-free phone line to answer Class Member questions; and
- (f) causing the short-form Publication Notice to be published in *USA Today*.

#### **PUBLICATION OF SUMMARY NOTICE**

5. In compliance with the Order Granting Preliminary Approval, Epiq caused the short-form Publication Notice (attached hereto as Exhibit A) to be published in *USA Today* on three (3) occasions. The Publication Notice appeared in the Marketplace section of *USA Today* on January 20, 24, and 25, 2011.

### **WEBSITE AND EMAIL**

6. Epiq established a website to inform visitors of the proposed Settlement ([www.SettlementVonage.com](http://www.SettlementVonage.com)). The site was live on January 13, 2011 and is still operating; the Online Claim portion becoming live on February 2, 2011. The long-form Publication Notice on the website includes Important Dates, a page to file an Online Claim form, a Documents page with functionality to download and print pertinent documents, and a Contact Us section with Settlement Administrator contact information. The website has received 324,331 unique visitors as of April 8, 2011. Epiq also established an email address ([questions@settlementvonage.com](mailto:questions@settlementvonage.com)) for Class Members to send in questions about the settlement. As of April 8, 2011, we have received 1,417 emails.

### **CALL CENTER AND TELEPHONE SUPPORT**

7. On January 13, 2011, Epiq launched a toll-free telephone support center, dedicated to this matter, to provide information to potential Class Members and others seeking information about the proposed Settlement. The toll-free telephone number (1-877-810-7292) is listed on the website and is still operating.

8. The toll-free number connects callers with an Interactive Voice Response (“IVR”) system, which includes a recorded message that provides callers with a brief summary of the proposed Settlement and the option to select one of several more detailed recorded messages addressing frequently asked questions. The toll-free line and recorded information is open 24 hours a day, 7 days a week. As of April 8, 2011 the IVR has handled 12,919 calls for a total of 22,176.09 minutes of use.



## **CLAIMS FORMS, EXCLUSION REQUESTS, AND OTHER COMMUNICATIONS**

9. Web Claims submitted by individuals are time and date stamped as they are received online. Claim Forms submitted via the U.S. Mail are recorded with the date they were postmarked and received. The Claim information provided is recorded in our database.

10. Communications from Class Members are prepped as mail was received from the US Postal Service. Received envelopes are opened and sorted into communications from Class Members (labeled "correspondence"). As of April 8, 2011, Epiq received 122 pieces of correspondence.

11. As of April 8, 2011, Epiq received one (1) Objection to the Settlement via email, which is attached as Exhibit B. To be considered timely, Objection requests must be postmarked by April 29, 2011.

12. To be considered timely, Opt Out requests must be postmarked by April 19, 2011. As of April 8, 2011, Epiq has received a total of 98 Opt Outs (81 received via email and 17 received by mail). A final report will be provided to the Court by April 29, 2011 with the total number of individuals who submitted a timely and valid Opt Out Request.

13. To be considered timely, Claim Forms must be submitted so they are filed online or postmarked within sixty (60) days of the Final Approval of the Settlement, which may be as early as July 9, 2011. As of April 8, 2011, Epiq received 38,653 total Claim Forms. Of the 38,653 Claim Forms submitted, 38,206 were filed online, and 447 were sent in the mail.

14. Each Claim submitted may represent more than one Benefit Category as outlined in the Settlement Agreement. As of April 8, 2011, 20,070 Benefit 1, 8,669 Benefit 2, 15,255 Benefit 3, and 1,694 Benefit 4 categories have been selected within the 38,653 total claims submitted.

15. The deadline for submitting a Claim is sixty (60) days after the entry of the Final Approval Order and Judgment. Any individuals' Claim that is rejected in its entirety for reason of a lack of qualifying proof, timeliness of the claim, or not being part of the settlement class will be notified in writing by Epiq. If the individual objects, they must object in writing by notifying Epiq within twenty (20) days from the issue date of the denial letter.

16. Epiq will determine the total valid Approved Claims submitted and the award amount; if it is less than the total amount of the net Common Fund allocated to satisfy Class Member claims, each Class Member will be paid one-hundred percent (100%) of their approved Claim. If the total award amount exceeds the net Common Fund, the awards will be reduced proportionately. A Class Member may contest the amount of their award by not depositing the check and objecting in writing notifying Epiq within twenty (20) days from the issue date on the check, along with the reason underlying the objection and providing documentation to support a different award amount.

I declare under penalty of perjury under the laws of the United States and the state of Oregon that the foregoing is true and correct and that this affidavit was executed on April 11, 2011 in Beaverton, Oregon.

  
JENNY PENNING

Subscribed and sworn to before me this 11<sup>th</sup> day of April, 2011.

  
NOTARY PUBLIC

My Commission Expires: August 10, 2012



# Exhibit A



## LEGAL NOTICE

## If You Are A Current or Former Vonage Customer, You May Be Entitled to Benefits From A Class Action Settlement.

### What is This Notice?

There is a proposed Settlement pending in a class action involving promotional offers made periodically by Vonage and its affiliates which may have been available to you when you initiated service with Vonage, or charges you may have incurred if you attempted to discontinue your Vonage service. The lawsuit, known as *In re: Vonage Marketing and Sales Practice Litigation*, MDL No. 1862, Civil Action No. 3:07-cv-03906 (D. N.J.), is pending in the US District Court for the District of New Jersey. The Settlement resolves several other cases that challenge Vonage's promotional offers and account discontinuance practices.

### What is the Lawsuit About?

The lawsuit involved alleged violations of law with respect to either these promotions or fees associated with discontinuance of Vonage service. Vonage strongly denies any wrongdoing, but has agreed to settle to avoid the burden and cost of further litigation. The Court has not made a decision on the merits of this case.

### Who is Included?

You may be a Class Member eligible for benefits if you became a Vonage customer in the United States, its territories or possessions on or before January 3, 2011, and either did not receive (i) a full month of free service if you signed up under a Vonage free month of service promotional plan (or two full free months if you signed up under a two months free service promotion), or (ii) a full refund of monies paid to Vonage under a 30-day money back guarantee plan if you cancelled between 31 and 40 days of sign-up (or between 61 and 70 days of sign up for a 60-day money back guarantee plan), or (iii) a refund or credit of a disconnection, cancellation or termination fee you paid after cancellation, or (iv) a refund or credit of monthly service fees paid for additional months of service that you did not use after you requested service cancellation. If you are not sure whether you are included, you can get more information on the Settlement website or by contacting the Settlement Administrator identified below.

### What does the Settlement Provide?

A settlement fund of \$4,750,000 in cash will be paid to approved Class Members based upon the validity of their claim(s) in each category. Certain costs will be deducted from the Settlement Fund before distribution to Class Members, including Class Counsel's attorneys' fees, litigation costs, administration fees, and incentive awards. The Settlement does not relieve Class Members from existing or future obligations owed to Vonage.

The proposed Settlement provides four different categories of relief:

Category 1: If you signed up for, but did not receive, a full month of free service under a Vonage free month promotional plan, you may be entitled to receive up to \$10.

Category 2: If you cancelled service between 31 and 40 days of sign-up but did not receive a full refund of monies paid to Vonage under a 30-day money back guarantee plan (or cancelled service between 61 and 70 days and did not receive a full refund of monies paid to Vonage under a 60-day money back guarantee plan), then you may be entitled to receive a refund up to \$25 for the monthly service fee and up to \$80 for equipment charges that you paid.

Category 3: If you paid, but were not refunded or credited, a termination, cancellation or disconnection fee after cancelling Vonage service, then you

may be entitled to receive a refund up to \$40.

Category 4: If you paid, but were not refunded or credited, a monthly service fee for additional months of service that you did not use after you requested service cancellation, you may be eligible to receive a refund up to \$50.

Class members may be entitled to receive benefits from more than one Category, although no Class Member can receive benefits under both Category 1 and Category 2.

### Who Represents Me?

The Court has appointed attorneys ("Class Counsel") to represent you. They are the law firms of Seeger Weiss and Cohen Milstein Sellers & Toll. You will not be charged for their work. Class Counsel will request an award from the Court for attorneys' fees not to exceed one-third of the \$4.75 million cash fund and expenses and for incentive awards not to exceed \$1,000 for each named plaintiff. You may retain your own attorney, but only at your own expense.

### What are my Legal Rights?

Get complete information about the Settlement at [www.SettlementVonage.com](http://www.SettlementVonage.com) and make a decision about your rights:

- **Remain in the Settlement Class and submit a claim.** You will be bound by the terms of the Settlement and give up your rights to sue in court or arbitration regarding issues in the case. Claim Forms must be postmarked or electronically submitted to the Settlement Administrator by **sixty (60) days after the Court enters Final Approval of the Settlement which may be as early as July 9, 2011.** You must file a Claim Form to be eligible to receive any benefits.
- **Exclude yourself and get no benefit from the Settlement.** You keep your right to sue on your own behalf at your own expense. Requests for exclusion must be postmarked to the Settlement Administrator by **April 19, 2011.**
- **Remain in the Settlement Class and file an objection.** You or your lawyer have the right to appear before the Court and object to the Settlement. Objections must be filed with the clerk of the court and served on counsel by **April 29, 2011.** Objections to the application for attorneys' fees and expenses must be received by **April 29, 2011.** Objections will be considered at the Fairness Hearing. You will be bound by the terms of the Settlement even if your objection is rejected.
- **Do nothing and do not file a claim.** You still give up your right to be part of any other lawsuit or arbitration against Vonage about issues relating to its one or two month free service and money back guarantee programs, and charging disconnection, termination or cancellation fees after cancellation, or charging for service after cancellation.

### When Will the Court Consider the Proposed Settlement?

The Court will determine whether to approve the Settlement and Class Counsel's request for fees and expenses at a Fairness Hearing held on May 10, 2011, at 10:00 a.m., at the United States District Court for the District of New Jersey, 402 East State St, Room 5050, Trenton, New Jersey. The Court will consider any timely filed objections at that time. If you file a timely objection, you may appear at the hearing to explain your objection, but you are not required to attend. If the hearing is relocated or rescheduled, the new location or date will be posted at [www.SettlementVonage.com](http://www.SettlementVonage.com).

**For further information and a Claim Form: Visit: [www.SettlementVonage.com](http://www.SettlementVonage.com)**

**Call: 1-877-810-7292 or**

**Write: Vonage Settlement Administrator at P.O. Box 6809, Portland, OR 97228-6809**



# Exhibit B

**From:** Ted Davis [Ted.Davis@MyBoat.com]  
**Sent:** Wednesday, February 09, 2011 6:59 PM  
**To:** Vonage Settlement Administrator  
**Subject:** Vonage settlement

Gentlemen,

I object to the settlement as I believe that this is just another scam by a group of attorneys. How much will I get from this settlement? How much will the attorneys get from this settlement? Is the judge getting anything? The big money is not a month of free Vonage service. The big money is what the attorneys get. Give me the details. Show me that I am wrong.

Sincerely,

Vonage customer

Ted Davis  
653 Locust Point Road  
Locust, NJ 07760  
732 904 4666